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April 8, 2004

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

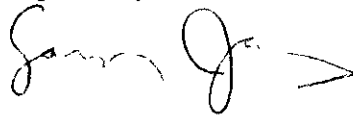
Re: Petition of WorldCom, Inc. and AT&T Communications of Virginia, Inc.,
Pursuant to Section 252(e)(5) of the Communications Act for Preemption
of the Jurisdiction of the Virginia State Corporation Commission Regarding
Interconnection Disputes with Verizon Virginia Inc., and for Expedited
Arbitration, CC Docket Numbers 00-218 and 00-251

Dear Ms. Dortch:

On behalf of Verizon Virginia Inc. ("Verizon") please find attached an original
and four copies of Verizon's Motion to Strike MCI's Submission for Approval of
Amendment to Verizon-MCI Interconnection Agreement.

Should there be any questions, please contact me at 202.663.6083.

Respectfully submitted,



Samir Jain

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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APR - 8 2004

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)
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In the Matter of Petition of WorldCom, Inc.)
Pursuant to Section 252(e)(5) of the)
Communications Act for Preemption)
of the Jurisdiction of the Virginia State)
Corporation Commission Regarding)
Interconnection Disputes with)
Verizon Virginia Inc., and for)
Expedited Arbitration)
)

CC Docket No. 00-218

**VERIZON'S MOTION TO STRIKE MCI'S SUBMISSION FOR
APPROVAL OF ADMENDMENT TO VERIZON-MCI
INTERCONNECTION AGREEMENT**

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Dated: April 8, 2004

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
Petition of WorldCom, Inc. Pursuant)	
to Section 252(e)(5) of the)	
Communications Act for)	
Preemption of the Jurisdiction of the)	CC Docket No. 00-218
Virginia State Corporation Commission)	
Regarding Interconnection Disputes)	
with Verizon Virginia Inc.)	
)	

**VERIZON'S MOTION TO STRIKE MCI'S SUBMISSION FOR APPROVAL OF
AMENDMENT TO VERIZON-MCI INTERCONNECTION AGREEMENT**

Verizon Virginia Inc. ("Verizon") requests that the Commission strike the March 26, 2004 filing by WorldCom, Inc. ("MCI"), which submits for the Commission's approval a voluntarily negotiated amendment to the Verizon-MCI interconnection agreement.¹ The voluntarily negotiated amendment sets forth the prospective terms for intercarrier compensation and interconnection architecture between MCI and Verizon, and their respective affiliates, throughout applicable jurisdictions in the United States. MCI's submission should be stricken as contrary to section 252 of the Telecommunications Act of 1996 and as procedurally improper. The amendment is already pending review by the Virginia State Corporation Commission ("SCC"), which is the sole regulator authorized by the Act to approve it.

¹ Letter from Kecia Boney Lewis, Senior Counsel, MCI, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 00-218 (filed March 26, 2004) at 1 ("MCI letter").

As MCI acknowledges, “[i]n the usual case, [an] amendment[] would be filed with the appropriate state commission.”² And in fact, on March 22, 2004, Verizon submitted this very amendment to the SCC for approval, a full business week before MCI’s filing here.³ Indeed, respective Verizon and MCI affiliates have submitted jointly the same amendment for approval in other states, several of which have approved it in recent weeks.⁴ MCI

² *Id.*

³ Indeed, there are numerous separate agreements between Verizon’s two Virginia affiliates (Verizon Virginia Inc. and Verizon South Inc.) and MCI’s three Virginia affiliates (MCI Worldcom Communications of Virginia, MCImetro Access Transmission Services of Virginia, and Intermedia Communications, Inc.). Several of these agreements are also amended by the amendment at issue here and are also pending before the Virginia SCC. *See* Interconnection Agreement Between Intermedia Communications, Inc. and Verizon Virginia Inc., Case No. PUC-1997-00028 (Va. SCC) (original agreement signed Feb. 19, 1997; amendment filed Mar. 22, 2004); Interconnection Agreement Between MCI Worldcom Communications of Virginia, Inc. and Verizon South Inc., f/k/a GTE South Incorporated, Case No. PUC-1997-00007 (Va. SCC) (original agreement signed May 12, 1997; amendment filed Mar. 23, 2004); Interconnection Agreement Between MCImetro Access Transmission Services of Virginia, Inc. and Verizon South Inc., f/k/a GTE South Incorporated, Case No. PUC-1996-00124 (Va. SCC) (original agreement signed Sept. 16, 1998; amendment filed Mar. 23, 2004).

⁴ *See, e.g.,* Order Approving Interconnection Agreement, *Application for Approval of the First Amendment to the Interconnection Agreement Between Verizon North Inc., and Intermedia Communications, Inc.*, Case No. 05-TI-987 (Wisc. PSC Mar. 4, 2004); Order Approving Interconnection Agreement, *Application for Approval of the First Amendment to the Interconnection Agreement Between Verizon North Inc., and MCImetro Access Transmission Services, LLC*, Case No. 05-TI-988 (Wisc. PSC Mar. 4, 2004); Memorandum Automatically Approving Application, *Application of Verizon North Inc. f/k/a GTE North Incorporated for Approval of a Negotiated Amendment with MCImetro Access Transmission Services LLC-OH Under Section 252 of the Telecommunications Act of 1996*, Case No. 04-102-TP-AEC (Ohio PUC Feb. 23, 2004); Memorandum Automatically Approving Application, *Application of Verizon North Inc. f/k/a GTE North, Incorporated for Approval of a Negotiated Amendment with MCI Worldcom Communications, Inc. Under Section 252 of the Telecommunications Act of 1996*, Case No. 04-101-TP-AEC (Ohio PUC Feb. 23, 2004); Memorandum Automatically Approving Application, *Application of Verizon North Inc. f/k/a GTE North, Incorporated for Approval of a Negotiated Amendment with Brooks Fiber Communications, Inc. Under Section 252 of the Telecommunications Act of 1996*, Case No. 04-100-TP-AEC (Ohio PUC Feb. 23, 2004).

nonetheless argues that, in this case, the Commission should preempt the SCC's jurisdiction pursuant to section 252(e)(5) of the Act on the ground that the Commission preempted the *arbitration* of the underlying Verizon-MCI interconnection agreement.⁵

The Act plainly precludes that result. The Commission and the courts have squarely held that the Commission may not preempt a state's jurisdiction to approve negotiated agreements, such as the amendment at issue here. Instead, section 252(e)(5) authorizes FCC preemption where a state "fails to act to carry out [a] responsibility under [section 252]" *only* with respect to the *arbitration* or *mediation* of interconnection agreements. This is because 252(e)(4) of the Act provides that if a state fails to act upon a request for approval of a voluntarily negotiated interconnection agreement, the agreement is deemed approved after 90 days.⁶ As the Commission accordingly has found, "automatic approval under section 252(e)(4) does not constitute a failure to act" that would give rise to the FCC's preemption authority.⁷ Indeed, the Commission codified this determination at 47 C.F.R. § 51.801(c): "A

⁵ MCI letter at 1.

⁶ "If the State commission does not act to approve or reject the agreement within 90 days after submission by the parties of an agreement adopted by negotiation under subsection (a) of this section . . . the agreement shall be deemed approved. No State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section." 47 U.S.C. § 252(e)(4).

⁷ First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499, 16128 ¶ 1286 (1996) ("*Local Competition Order*") ("We agree with the majority of commenters that argue that our authority to assume the state commission's responsibilities is not triggered when an agreement is 'deemed approved' under section 252(e)(4) due to state commission inaction . . . Rules of statutory construction require us to give meaning to all provisions and to read provisions consistently, where it is possible to do so. We thus conclude that the most reasonable interpretation is that automatic approval under section 252(e)(4) does not constitute a failure to act."); Memorandum Opinion and Order, *Global Naps South, Inc. Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Dispute with Bell Atlantic-*

state shall not be deemed to have failed to act for purposes of section 252(e)(5) of the Act if an agreement is deemed approved under section 252(e)(4) of the Act.” And the courts have confirmed the FCC’s interpretation. *See MCI Telecomm. Corp. v. Pub. Serv. Comm’n of Utah*, 216 F.3d 929, 938 n.1 (10th Cir. 2000) (“the FCC will not step in to assume the approval function”); *MCI Telecomm. Corp. v. Ill. Commerce Comm’n*, 183 F.3d 558, 561 (7th Cir. 1999).

The Commission thus has no jurisdiction to review the amendment, but must instead allow the SCC to complete its own review. Even though the SCC declined to conduct the Verizon-MCI arbitration in 2000 because it concluded that it lacked statutory authority to administer section 252 of the Act,⁸ the SCC has continued to review negotiated agreements, including negotiated amendments to existing interconnection agreements.⁹ In fact, just one day

Virginia, Inc., 15 FCC Rcd 23318, 23328 n.19 (1999) (observing that “there is no ‘failure to act’ when an interconnection agreement is ‘deemed approved’ under section 252(e)(4) as a result of state commission inaction”) (quoting *Local Competition Order* at 16128 ¶ 1285); Memorandum Opinion and Order, *Petition of MCI for Preemption Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, 12 FCC Rcd 15594, 15617 n.97 (1997) (“We emphasize, however, that the Act does not authorize us to find that a state commission has failed to act within the meaning of section 252(e)(5) merely because the state commission allows an agreement submitted for approval . . . to go into effect automatically by declining to reject the agreement within the . . . time frame established in section 252(e)(4).”).

⁸ See Memorandum Opinion and Order, *Petition of WorldCom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996 and for Arbitration of Interconnection Disputes with Verizon Virginia Inc.*, 16 FCC Rcd 6224, 6225-27 ¶¶ 4-5 (2001) (“Preemption Order”); *Petition of MCI Metro Access Transmission Services of Virginia, Inc. and MCI WorldCom Communications of Virginia, Inc., for Arbitration of an Interconnection Agreement With Bell Atlantic-Virginia, Inc.*, Case No. PUC000225 (Va. SCC Sept. 13, 2000).

⁹ See, e.g., Order Approving Amendment, *Application of Verizon Virginia Inc. and Cox Virginia Telecom, Inc. For Approval of an Interconnection Agreement Under § 252(e) of the Telecommunications Act of 1996*, Case No. PUC-2002-00221 (Va. SCC July 30, 2003); Order Approving Amendment, *Application of Verizon Virginia Inc. and GCR Telecommunications, Inc.*

before MCI filed the instant amendment with the Commission, the SCC approved an amendment to an interconnection agreement under § 252(e)(2) of the Act.¹⁰ And in that case, as in this one, the SCC was not involved in arbitrating the underlying agreement: there, the original agreement had been arbitrated in California.¹¹ Furthermore, effective July 1, 2003, the Virginia General Assembly amended VA. CODE ANN. § 56-265.4:4 to grant the SCC specific authority to administer the full range of proceedings required by section 252 of the 1996 Act,¹² removing any question about the SCC's inherent authority to review interconnection agreements, and undermining MCI's reference back to the SCC's original refusal to arbitrate the Verizon-MCI agreement.¹³

For Approval of an Interconnection Agreement Under § 252(e) of the Telecommunications Act of 1996, Case No. PUC010036 (Va. SCC Aug. 27, 2001); Order Approving Amendment, Application of Verizon Virginia Inc. f/k/a Bell Atlantic-Virginia, Inc. and SBC Telecom, Inc. For Approval of an Interconnection Agreement Under § 252(e) of the Telecommunications Act of 1996, Case No. PUC000179 (Va. SCC Dec. 20, 2000).

¹⁰ See Order Approving Amendment, *Application of Verizon South Inc. and Cypress Communications Holding Company of Virginia, Inc. For Approval of Amendment No. 2 to Interconnection Agreement Under § 252(e) of the Telecommunications Act of 1996*, Case No. PUC-2003-00116 (Va. SCC Mar. 25, 2004).

¹¹ In that case, the SCC specifically noted that “[t]he parties have not requested approval of the underlying interconnection agreement pursuant to § 252(e) of the Act or state authority; therefore, this Order approves only [the amendment] to the agreement. We render no opinion on the propriety of the underlying agreement.” *Id.* at 1 n.1.

¹² The SCC “shall discharge the responsibilities of state commissions as set forth in the federal Telecommunications Act of 1996 and applicable law and regulations, including, but not limited to, the arbitration of interconnection agreements between local exchange carriers.” VA. CODE ANN. § 56-265.4:4 (internal cited omitted); see also *Anderson v. Yungkau*, 329 U.S. 482, 485 (1947) (“The word ‘shall’ is ordinarily [t]he language of command.”) (internal quotation marks omitted).

¹³ In fact, MCI has been participating since November 21, 2003 in a §§ 251-52 matter before the SCC. See MCI WorldCom Communications of Virginia, Inc. Motion to Intervene and Initial Comments, *Application of Verizon Virginia Inc. and Verizon South Inc. For Authority to Cease Providing Unbundled Switching in Certain Markets and Unbundled Dedicated Transport*

Moreover, the Commission's 2001 *Preemption Order* carefully limited its scope to "the arbitration of [MCI's] interconnection agreement with Verizon."¹⁴ That agreement has been finalized and implemented. The amendment at issue, in contrast, was negotiated separately from the Bureau's arbitration of the original interconnection agreement, the implementation of the resulting contract, and the pricing schedule recently submitted to the Bureau. In fact, the amendment sets forth only *prospective* terms for intercarrier compensation and interconnection architecture as between MCI and Verizon (and their respective affiliates), and does so for applicable jurisdictions throughout the United States, not just for the Verizon footprint in Virginia covered by the arbitrated agreement. Accordingly, the Commission must reject MCI's suggestion that "it makes the most sense to have this amendment approved by the FCC as part of its broader duties in arbitrating disputes over the contract's formation" because the FCC arbitrated the Verizon-MCI agreement.¹⁵ Not only is this suggestion contrary to the statute, but it ignores that the voluntary amendment at issue here (1) is not a dispute and (2) has nothing to do with the contract's formation.

Nor would it make sense to have the FCC continue, ad infinitum, to consider amendments to the Verizon-MCI interconnection agreement. MCI's implicit suggestion that, once a state has failed to act with respect to arbitrating terms for an agreement, its jurisdiction is forever terminated, is inconsistent with the Commission's determination that its

on *Certain Routes as Unbundled Network Elements Under 47 U.S.C. Section 251(c)(3)*, Case No. PUC-2003-00170 (Va. SCC Nov 21, 2003).

¹⁴ *Preemption Order* at 6230 ¶ 12 (emphasis added).

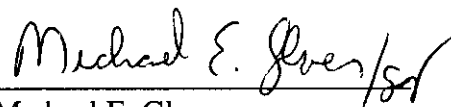
¹⁵ MCI letter at 1

preemption authority should be implemented narrowly — even in those cases, unlike this one, where section 252(e)(5) properly applies. The Commission has specifically ruled that it “will not take an expansive view” of when preemption under 252(e)(5) is appropriate.¹⁶ The D.C. Circuit has agreed that preemption is appropriate only in specific instances where the state has failed to respond to a specific request or matter. *Global NAPs, Inc. v. FCC*, 291 F.3d 832, 837 (D.C. Cir. 2002). MCI’s expansive view is insupportable.

CONCLUSION

For all the reasons stated above, the Commission should strike MCI’s submission and should not review the amendment, leaving review thereof to the governmental body charged with doing so — the Virginia SCC.

Respectfully submitted,


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Dated: April 8, 2004

¹⁶ *Local Competition Order at 16128 ¶ 1285 (1996).*

CERTIFICATE OF SERVICE

I do hereby certify that true and accurate copies of the foregoing, Verizon Virginia Inc.'s Motion to Strike MCI's Submission for Approval of Amendment to Verizon-MCI Interconnection Agreement, were served by hand delivery via courier this 8th day of April, 2004, to

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